On the evidence, the trial judge found that the purposes for which the tapioca flour supplied under the contract of sale would normally be used are food for human consumption and starch. He then went on to say:—

"It seems to me that no one would buy the tapioca flour supplied under the contract of sale for the two purposes for which the tapioca flour would normally be used, if he knew that it was discoloured by the red ink. In my judgment, the tapioca flour in the form it was tendered by the defendants to the plaintiffs was not of merchantable quality, because it was not saleable as tapioca flour for the normal uses of tapioca flour, namely, food for human consumption and starch. I am satisfied on the evidence before me that the red colouring came from the red ink used by the defendants to mark the bags with their mark which included Chinese letters, and that the red ink was laid on thickly on one side of the bags when the marking was done".

In our view the appellants' contention is well-founded. The only evidence before the trial judge that the flour was of no use for either of the purposes found by him, and hence unsaleable, was the evidence of the two experts from Germany and he appears to have arrived at his conclusion solely because the tapioca flour had been condemned for human consumption in Germany as a result of the inadmissible red colour used to mark the bags which had discoloured part of the flour. This colour was only inadmissible because of the German regulations and there is no evidence as to its inadmissibility under English law. The trial judge also appears to have overlooked the fact that the discoloration only affected a very small portion of the flour within reach of the lettering on the bags. There is no evidence at all as to the unfitness of the greater portion of the flour whether under German or English law. He also appears to have overlooked the fact that Dr. Hofmann's certificate only condemned as unfit for human consumption that portion of the flour actually contaminated by the inadmissible red colour. There is also nothing in the evidence of these experts to show that the tapioca flour was unfit for use or sale as starch. The trial judge's finding therefore that it could not be used or sold as starch is unsupported by any evidence.

In our judgment the plaintiffs/respondents have failed to show that the tapioca flour was of unmerchantable quality under English law. Undoubtedly, there was discoloration of a small portion of the flour but it must be borne in mind, as the trial judge himself found, that even the contaminated part did not contain any injurious ingredient. The flour may not have been in perfect condition but in our judgment, in the absence of evidence to the contrary, it was at least usable as starch. The sworn surveyor, Helmut Tillery, himself stated that the parcel of goods surveyed by him was tapioca starch and we can think of no reason why it could not have been used or sold as such. Moreover, it has not been satisfactorily proved that it was unfit for human consumption under our law.

It is for these reasons that the appeal was allowed.

Appeal allowed.

Solicitors: *Braddell Bros.; Donaldson & Burkinshaw.*

SAW CHIANG GUAN & ORS. v. PUBLIC PROSECUTOR

[A.Cr.J. (Winslow J.) July 9, 1968]
[Singapore — Magistrate's Appeal No. 230 of 1967]

Criminal Law and Procedure — Joint trial — Persons conducting bookmaking activities in same premises — Whether concerned in commission of same offence — Betting Ordinance, 1960, s. 5(3) — Criminal Procedure Code (Cap. 132), s. 169.

The appellants in this case were jointly tried on a charge under section 5(3)(a) of the Betting Ordinance, 1960. The appellants were found carrying on their bookmaking activities in the same premises, but there was no evidence to show that they were jointly concerned in conducting the bookmaking operations.

Held, allowing the appeal: the joint trial of the three appellants was illegal and therefore their convictions must be set aside.

Case referred to:—

(1) *Teo Kow Chye & Anor.* v. *Public Prosecutor* [1965] 2 M.L.J. 212.

MAGISTRATE'S CRIMINAL APPEAL.

Jimmy Loh for the appellants.

Tay Soo Tee (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Winslow J.: Each one of the three appellants was originally charged separately with acting as a bookmaker on 7th August, 1966 at about 1735 hours in room 407, 4th floor, No. 6 Cecil Street, Singapore and thereby committing an offence punishable under section 5(3)(a) of the Betting Ordinance, 1960 (No. 30/60) but, on 21st October, 1966, the prosecution applied for a joint trial under section 169 of the Criminal Procedure Code. This application was granted and the case eventually came on for hearing at a joint trial of all three appellants on 16th October, 1967 when they were each convicted and fined $3,000, in default 18 months' imprisonment.

Taking the view which I do about their joint trial, it is unnecessary for me to deal with the remaining grounds of appeal which are directed towards the merits.

Section 169 of the Criminal Procedure Code empowers the joint trial of more persons than one where, *inter alia,* they are accused of the

same offence or of different offences committed in the same transaction.

The prosecution was bound to establish that each one of the three appellants was accused of the same offence. In order to establish that they were all accused of and were committing the same offence, it had to be shown that all three were jointly and collectively engaged in the same act of bookmaking. It is clear that they were not charged with committing different offences in the same transaction because each one of them was charged with acting as a bookmaker.

As the learned Chief Justice held in *Teo Kow Chye & Anor.* v. *Public Prosecutor,*[1] the mere fact that two persons are in the same premises when carrying on their alleged unlawful activities is not sufficient to bring them within the provisions of section 169.

Because two or more persons use the same premises for the conduct of their bookmaking activities, it does not, in my view, automatically follow that they are concerned in the commission of the same offence as would, for example, be the case where two or more persons enter the same premises for the purpose of committing a robbery and do, in fact, commit it. It would be clear from the surrounding circumstances that such persons are jointly concerned in one offence of robbery and they can be jointly charged and tried for it. On the other hand, two persons can conduct bookmaking operations whilst in the same premises without necessarily being jointly concerned in the same act of bookmaking. Each one of them may be receiving bets from his own clients over the telephone and recording such bets without the other person being jointly concerned with him in that offence. I do not think that the prosecution can establish that one bookmaker was jointly concerned with another in the same offence merely by showing that he could have thrown out bets to that other or even received bets from that other person. It is, of course, open to the prosecution, if they can, to prove abetment on the part of that other, in which case section 169 would sanction a joint trial. There is no such evidence herein.

In this particular appeal, the only evidence adduced by the prosecution to show that the three appellants were acting jointly in one transaction of bookmaking was that of Leong Ah Chee (P.W.2), an Inspector from the Gambling Suppression Branch of the C.I.D., who gave expert evidence relating to three sets of documents found on a desk in the premises which, according to him, proved that the person in possession of each of these three sets of documents would, in the case of two sets, be bookmakers, and, in the case of the third set, be someone assisting in the business of bookmaking. He denied that any of such persons could have been an agent or a runner of a bookmaker though he seemed to be a little unsure about this. In answer to the court as to whether he thought that the persons in posssession of these three sets could be said to be conducting bookmaking operations individually or jointly, he stated:—

"It depends on the arrangements between them. It could be a syndicate. It could be individually and as races progress they have frequent interchanges of bets. They have more or less business connections, however".

This answer cannot, by any means, be said to show joint participation of the possessors of these documents in the one transaction of bookmaking. There was no other evidence that there was a syndicate of any kind. As I have earlier observed, a syndicate cannot materialise from the mere presence of two or more persons in the same premises, who may be conducting bookmaking operations, each with his own clients.

In my judgment, the joint trial of the three appellants was therefore illegal.

Their appeals are accordingly allowed and their convictions set aside. The fines, if paid, will be refunded.

There will, however, be separate retrials of each appellant. Bail will be extended in each case.

Appeals allowed. Separate retrials ordered.

Solicitors: *Ironside & de Souza.*

CHEONG LEP KEEN & ANOR. v. TAN TIN KEK

[O.C.J. (Gill J.) July 31, 1968]
[Malacca — Civil Suit No. 53 of 1966]

Landlord and Tenant — Lease void for non-registration — Effect of entry and payment of rent.

The plaintiffs in this case claimed possession of certain premises occupied by the defendant. The defendant was in occupation of the premises under an agreement with the previous owner which purported to be a lease for 80 years at a rental of $150 per month. The lease was not registered under the Registration of Deeds Ordinance.

Held, allowing the claim: (1) as the lease was not registered it was void but as the defendant had entered on the premises and paid a monthly rent he must be deemed to hold the premises on a monthly tenancy;

(2) as the monthly tenancy had been validly terminated by a notice to quit, the defendant was in wrongful occupation of the premises and judgment must be given to the plaintiffs.

Toh Ching Kwan v. *Ng Ah Kak & Ors.*[11] not followed.

Cases referred to:—

(1) *Hunt* v. *Luck* [1902] 1 Ch. 428, 433.

(2) *Doe d. Rigge* v. *Bell* (1793), 5 T.R. 471; 101 E.R. 265.

(3) *Clayton* v. *Blakey* (1798), 101 E.R. 1234.

(4) *Tress* v. *Savage* (1854), 4 E.L. & B.L. 36; 119 E.R. 15.